

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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MAZDA MOTOR CORPORATION,

ECF CASE

Plaintiff,  
- against -

08 Civ. 355 (NRB)

MAERSK LINE; AP MOLLER-MAERSK A/S  
MAERSK SEALAND; MAERSK INC.,  
BURLINGTON NORTHERN AND SANTA FE  
RAILWAY COMPANY; BNSF RAILWAY CO.;  
BURLINGTON NORTHERN SANTA FE CORP.,

**DEFENDANT BNSF'S CROSS  
CLAIMS AND ANSWER TO  
CROSS CLAIM**

Defendants.  
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Defendants BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY; BNSF  
RAILWAY CO.; BURLINGTON NORTHERN SANTA FE CORP., ( "BNSF") by their attorneys,  
Landman Corsi Ballaine & Ford P.C., hereby answer the cross claim of AP MOLLER-MAERSK  
A/S ("Maersk") and cross-claim against Maersk as follows:

1. BNSF repeats, reiterates and realleges each and every response contained in  
paragraphs "1" through "54" of its Answer with the same force and effect as if fully set forth at  
length herein.

2. BNSF denies knowledge or information sufficient to form a belief as to the truth of  
the allegations contained in paragraph "2" of the Cross Claim and refer all matters of law to the  
Court.

3. BNSF denies the truth of each and every allegation contained in paragraph "3" of the  
Cross Claim.

4. BNSF denies the truth of each and every allegation contained in paragraph "4" of the

Cross Claim.

**FIRST AFFIRMATIVE DEFENSE**

5. Any and all of Maersk's cross claims are barred to the extent that a prior and pending action exists.

**FIRST CROSS CLAIM**

6. If BNSF is found liable to plaintiff in this action, BNSF alleges that such liability is the result, either wholly or in part, of the negligence, acts, omissions, and/or breach of contract, implied or express, and/or breach of warranty, implied or express, and/or breach of bailment duties of Maersk, thereby entitling BNSF to indemnification or contribution from Maersk, for such liability.

7. That by reason of the foregoing, defendant Maersk will be liable to BNSF in the event judgment is recovered by plaintiff in the amount of said judgment or in an amount equal to the excess over and above BNSF's equitable share of such judgment. The equitable shares of any judgment recovered by plaintiff are to be determined in accordance with the relative culpability of defendants.

8. If plaintiff is entitled to recover any damages against BNSF, BNSF is entitled to recover indemnity and/or contribution from Maersk for such sums together with expenses including reasonable attorney fees and costs in defending plaintiff's action.

**SECOND CROSS CLAIM**

9. If BNSF is found liable to plaintiff in this action, BNSF alleges that Maersk, would be liable for said judgment or settlement pursuant to contractual agreement(s).

10. If plaintiff is entitled to recover any damages against BNSF, BNSF is entitled to recover indemnity and/or contribution from Maersk for such sums together with expenses including

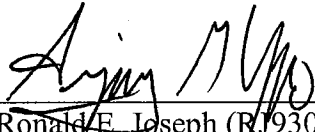
reasonable attorney fees and costs in defending plaintiff's action.

**WHEREFORE**, BNSF demands judgment dismissing Maersk's cross claims herein, together with its costs and disbursements, further demands that in the event plaintiff recovers judgment against BNSF, then BNSF demands judgment over and against Maersk, for the amount of any such judgment, or in an amount equal to the excess over and above its equitable share of any such judgment, together with the costs and disbursements of this action and such other and further relief as this Court deems appropriate.

Dated: New York, New York  
June 5, 2008

Respectfully submitted,

LANDMAN CORSI BALLAINE & FORD P.C.

By:   
\_\_\_\_\_  
Ronald E. Joseph (R.9302)  
Arjay G. Yao (AY0506)  
Attorneys for Defendants  
BURLINGTON NORTHERN AND SANTA FE  
RAILWAY COMPANY; BNSF RAILWAY CO.;  
BURLINGTON NORTHERN SANTA FE CORP.,  
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TO: David L. Mazaroli, Esq.  
Attorney for Plaintiffs  
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New York, New York 10007

FREEHILL HOGAN & MAHAR LLP  
Attorneys for Defendants MAERSK LINE;  
AP MOLLER-MAERSK A/S MAERSK SEALAND; MAERSK INC.  
80 Pine Street  
New York, New York 10005-1759

**AFFIDAVIT OF SERVICE BY MAIL**

STATE OF NEW YORK     )  
                                      ) ss.:  
COUNTY OF NEW YORK    )

**RYAN NEW**, being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at NEW YORK, NEW YORK.

That on the 5<sup>th</sup> day of June, 2008, deponent served the within **DEFENDANT BNSF'S CROSS CLAIMS AND ANSWER TO CROSS CLAIM** upon:

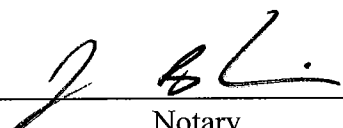
LAW OFFICES,  
DAVID L. MAZAROLI  
David L. Mazaroli, Esq. (DM 3929)  
11 Park Place - Suite 1214  
New York, New York 10007

Peter J. Gutowski, Esq.  
FREEHILL HOGAN & MAHAR LLP  
80 Pine Street  
New York , New York 10005-1759

attorneys in this action, at the addresses designated by said attorneys for that purpose by depositing a true copy of same enclosed in a postpaid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States post office department within the State of New York.

  
\_\_\_\_\_  
Ryan New

Sworn to before me this  
5<sup>th</sup> day of June, 2008

  
\_\_\_\_\_  
Notary

**JASON BUSKIN**  
Notary Public, State of New York  
No. 02BU6123327  
Qualified in New York County  
Commission Expires March 7, 2009